A **MALAYSIAN ASSURANCE ALLIANCE BHD**

v.

COMSA PROPERTIES SDN BHD

B COURT OF APPEAL, PUTRAJAYA
KN SEGARA JCA
SYED AHMAD HELMY JCA
AZIAH ALI JCA
[CIVIL APPEAL NO: W-02(NCC)-1307-2010]
C 26 JULY 2012

CONSTITUTIONAL LAW: *Jurisdiction - High Court - Local jurisdiction - Winding-up petition in Kuala Lumpur High Court against company registered in Sabah - Whether Kuala Lumpur High Court* D *lacked jurisdiction to wind up respondent - Whether action fell within ambit of s. 23(1)(b) of Courts of Judicature Act 1964 to confer jurisdiction to High Court in Sabah - Federal Constitution, art. 121(1)*

JURISDICTION: *High Court - Local jurisdiction - Winding-up* E *petition in Kuala Lumpur High Court against company registered in Sabah - Whether Kuala Lumpur High Court lacked jurisdiction to wind up respondent - Whether action fell within ambit of s. 23(1)(b) of Courts of Judicature Act 1964 to confer jurisdiction to High Court in Sabah*

F The appellant/petitioner petitioned to wind up the respondent in the High Court of Malaya at Kuala Lumpur ('KL High Court') under s. 218 of the Companies Act 1965 ('the Act'). The respondent was a Sabah company with its registered address in Tawau and the landed properties which were charged by the respondent were all situated in Sabah and registered under the G Sabah Land Ordinance. The petition was dismissed by the High Court. Subsequently, the appellant filed and appeared as a supporting creditor in another petition for winding-up of the respondent filed in the High Court of Sabah at Kota Kinabalu ('KK High Court') by another creditor which was allowed and the H respondent wound up. In this appeal by the appellant, against the dismissal by the KL High Court, the respondent raised a preliminary objection on the grounds that: (i) the court in West Malaysia lacked the jurisdiction to wind up the respondent which is a Sabah registered company whose charged properties were I situated in Sabah; and (ii) that the appeal had been rendered academic by reason of the respondent having been wound-up subsequently by order of the KK High Court.

Held (dismissing appeal with costs; affirming order of the High Court)
Per Syed Ahmad Helmy JCA delivering the judgment of the court:

(1) By reason of art. 121(1) of the Federal Constitution two separate High Courts of co ordinate jurisdiction was established, High Court of Malaya being seised with local jurisdiction covering the geographical area of West Malaysia and the High Court of Sabah and Sarawak covering the territorial area of East Malaysia. (para 7)

(2) The respondent company being a Sabah company with its registered office in Tawau, Sabah would clearly fall within the ambit of s. 23(1)(b) of the Courts of Judicature Act 1964 ('CJA') so as to confer jurisdiction to the High Court in Sabah, thereby excluding the jurisdiction of the KL High Court. The appellant also had failed to produce a written consent of all parties so as to confer jurisdiction to the KL High Court. There was therefore merit in the preliminary objection on the issue of jurisdiction. (paras 10 & 12-13)

(3) Upon the winding-up of the respondent by the KK High Court, the provisions of s. 226 particularly s. 226(3) and 226(4) of the CJA was triggered and would take effect. The objective of the appeal which was to reverse the KL High Court decision not to wind up the respondent had clearly been overtaken by the winding-up of the respondent by the KK High Court thus rendering the pursuit of the appeal academic. The other important effect is the prevention of multiplicity of suits and minimising costs. (paras 15-18)

Bahasa Malaysia *Translation Of Headnotes*

Perayu/pempetisyen mempetisyen untuk menggulungkan responden di Mahkamah Tinggi Malaya di Kuala Lumpur ('Mahkamah Tinggi KL') di bawah s. 218 Akta Syarikat 1965 ('Akta'). Responden merupakan sebuah syarikat Sabah dengan alamat berdaftarnya di Tawau dan hartanah yang digadaikan oleh responden kesemuanya terletak di Sabah dan berdaftar di bawah Ordinan Tanah Sabah. Petisyen tersebut ditolak oleh Mahkamah Tinggi. Selepas dari itu, perayu memfailkan dan hadir sebagai pemiutang sokongan di dalam satu lagi petisyen untuk penggulungan responden yang difailkan di

A Mahkamah Tinggi Sabah di Kota Kinabalu ('Mahkamah Tinggi KK') oleh seorang lagi pemiutang, yang dibenarkan dan responden digulungkan. Di dalam rayuan ini oleh perayu, terhadap penolakan oleh Mahkamah Tinggi KL, responden membangkitkan bantahan awalan atas alasan bahawa: (i) mahkamah di Malaysia Barat tidak
B mempunyai bidang kuasa untuk menggulungkan responden yang merupakan syarikat yang didaftarkan di Sabah yang hartanahnya yang digadaikan terletak di Sabah; dan (ii) bahawa rayuan tersebut menjadi akademik atas alasan bahawa responden telahpun digulungkan melalui perintah Mahkamah Tinggi KK.

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Diputuskan (menolak rayuan dengan kos; mengesahkan perintah Mahkamah Tinggi)
Oleh Syed Ahmad Helmy HMR menyampaikan penghakiman mahkamah:

D **(1)** Melalui per. 121(1) Perlembagaan Persekutuan, dua Mahkamah Tinggi yang berasingan dengan bidang kuasa yang sama ditubuhkan, Mahkamah Tinggi Malaya dengan bidang kuasa setempat yang merangkumi Malaysia Barat dan Mahkamah Tinggi Sabah dan Sarawak yang merangkumi Malaysia Timur.
E

(2) Responden sebagai syarikat Sabah yang mempunyai pejabat berdaftarnya di Tawau, Sabah jelas terangkum dalam lingkungan s. 23(1)(b) Akta Mahkamah Kehakiman ('AMK') untuk memberikan bidang kuasa kepada Mahkamah Tinggi
F Sabah, dengan itu mengecualikan bidang kuasa Mahkamah Tinggi KL. Perayu juga gagal mengemukakan persetujuan bertulis kesemua pihak yang memberikan bidang kuasa kepada Mahkamah Tinggi KL. Dengan itu terdapat merit di dalam bantahan awalan berkaitan dengan isu bidang kuasa.

G **(3)** Dengan penggulungan responden oleh Mahkamah Tinggi KK, peruntukan s. 226 khususnya s. 226(3) dan 226(4) AMK dicetuskan dan berkuatkuasa. Tujuan rayuan ini yang adalah untuk mengakas keputusan Mahkamah Tinggi KL, yang tidak
H mahu menggulungkan responden, jelas dipintas dengan penggulungan responden oleh Mahkamah Tinggi KK, menjadikan rayuan ini akademik. Satu lagi kesan yang penting ialah untuk mengelakkan penduaan guaman dan mengurangkan kos.

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Case(s) referred to:

Dayasar Corp Sdn Bhd v. CP Ng & Co Sdn Bhd [1990] 1 CLJ 262; [1990] 2 CLJ (Rep) 11 HC ***(refd)***

Fung Beng Tiat v. Marid Construction Co [1997] 2 CLJ 1 FC ***(refd)***

Ham Ho Seng v. Aik Aik Holdings Sdn Bhd & Anor And Another Suit [1999] 1 LNS 165 HC ***(refd)***

Syarikat Nip Kui Cheong Timber Contractor v. Safety Line And General Insurance Co Sdn Bhd [1975] 1 LNS 173 HC ***(refd)***

Watta Battery Industires Sdn Bhd v. Uni-Batt Manufacturing Sdn Bhd And Chow Siew Hon & 4 Ors (Interveners) [1993] 1 CLJ 555 HC ***(refd)***

Legislation referred to:

Companies Act 1965, ss. 218, 226(3), (4)
Court of Judicature Act 1964, ss. 3, 23(1)(b)
Federal Constitution, art. 121(1)

For the appellant - R Vinayaga (Vijay Raj with him); M/s Skrine
For the respondent - Cyrus Das (Mohd Rizal with him); M/s Bahari & Bahari

[Appeal from High Court, Kuala Lumpur; Companies (Winding-Up) No: D-28-NCC-283-2009]

Reported by S Barathi

JUDGMENT

Syed Ahmad Helmy JCA:

[1] The appellant who is the petitioner in the court below petitioned the High Court of Malaya at Kuala Lumpur to wind up the respondent under s. 218 of the Companies Act 1965. The learned High Court Judge dismissed the petition on the grounds appearing in his written grounds of judgment dated 13 April 2010. Dissatisfied with the decision the petitioner filed in this appeal.

[2] At the hearing of the appeal before us learned counsel for the respondent raised a preliminary objection on two grounds, namely:

(a) the court in West Malaysia lacked the jurisdiction to wind up the respondent which is a Sabah registered company whose charged properties were situated in Sabah (the jurisdiction point).

A (b) the appeal has been rendered academic by reason of the respondent having been wound up subsequently by order of the Kota Kinabalu High Court on the 26 April 2010 (the academic point).

B **Jurisdiction Point**

[3] In approaching the jurisdiction point reference would have to be made to the Federal Constitution and the Courts of Judicature Act 1964.

C **[4]** Article 121(1) of the Federal Constitution read as follows:

121(1) There shall be two High Courts of co-ordinate jurisdiction and status, namely:

(a) one in the States of Malaya, which shall be known as the
D High Court in Malaya and shall have its principal registry at such place in the States of Malaya as the Yang di-Pertuan Agong may determine; and

(b) one in the States of Sabah and Sarawak, which shall be known as the High Court in Sabah and Sarawak and shall
E have its principal registry at such place in the States of Sabah and Sarawak as the Yang di-Pertuan Agong may determine;

(c) (Repealed),

F and such inferior courts as may be provided by federal law; and the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under federal law.

[5] Section 23 of the Courts of Judicature Act 1964 which
G provides for the general civil jurisdiction of the High Court read as follows:

Civil jurisdiction - general

(1) Subject to the limitations contained in Article 128 of the
H Constitution the High Court shall have jurisdiction to try all civil proceedings where:

(a) the cause of action arose;

(b) the defendant or one of several defendants resides or has his
I place of business;

(c) the facts on which the proceedings are based exist or are alleged to have occurred; or

(d) any land the ownership of which is disputed is situated, within the local jurisdiction of the court and notwithstanding anything contained in this section in any case where all parties consent in writing within the local jurisdiction of the other High Court.

(2) Without prejudice to the generality of subsection (1), the High Court shall have such jurisdiction as was vested in it immediately prior to Malaysia Day and such other jurisdiction as may be vested in it by any written law in force within its local jurisdiction.

[6] The definition of High Court and local jurisdiction is spelt out in s. 3 of the Courts of Judicature Act 1964 to mean separately the two High Courts constituted by art. 121(1) of the Federal Constitution and the territorial area of their local jurisdiction.

[7] Hence by reason of art. 121(1) of the Federal Constitution two separate High Courts of co ordinate jurisdiction was established - the High Court of Malaya being seised with local jurisdiction covering the geographical area of West Malaya and the High Court of Sabah and Sarawak covering the territorial area of East Malaysia.

[8] The separate and distinct territorial jurisdiction of the two High Courts have been judicially recognised by Hashim Yeop Sani J (as he then was) in the case of *Syarikat Nip Kui Cheong Timber Contractor v. Safety Line And General Insurance Co Sdn Bhd* [1975] 1 LNS 173.

[9] Turning to the factual matrix herein, it is not in dispute that the respondent is a Sabah company with its registered address in Tawau and the landed properties which was charged by the respondent are all situate in Sabah and registered under the Sabah Land Ordinance Cap 68.

[10] The characteristic aforesaid of the respondent falls squarely within the local jurisdiction of the High Court in Sabah thereby excluding jurisdiction of the Kuala Lumpur High Court. The respondent company being a Sabah company with its registered office in Tawau, Sabah would clearly fall within the ambit of s. 23(1)(b) of the Courts of Judicature Act 1964 so as to confer jurisdiction to the High Court in Sabah.

[11] Section 23 of the Courts of Judicature Act 1964 being the determinant provision on the issue of jurisdiction was addressed by Abu Mansor J (as he then was) in *Dayasar Corp Sdn Bhd v. CP Ng & Co Sdn Bhd* [1990] 1 CLJ 262; [1990] 2 CLJ (Rep) 11 which he ruled in the affirmative. He went further to hold that it was never the legislative intention for the High Court in Malaya to assume jurisdiction over a matter arising in or which should be filed in the Kuching court. The principle distilled in *Dayasar*'s case *(supra)* was approved by the Federal Court in *Fung Beng Tiat v. Marid Construction Co* [1997] 2 CLJ 1.

[12] It is also pertinent to emphasize that the High Court Judge in his grounds of judgment dismissing the winding up petition found that the appellant has failed to produce written consent of all parties so as to confer jurisdiction to the Kuala Lumpur High Court. This was what the learned judge stated in his written grounds appearing at p. 25 of the appeal record:

> On the issue of jurisdiction the petitioner has not produced consent of all parties in writing for the matter to be heard in the High Court of Malaya as set out in section 23 of Courts of Judicature Act 1964. In consequence the petition must be dismissed *in limine*. (see *Bumiputra-Commerce Leasing Bhd v. Nethaven Pacific Sdn Bhd & Ors* [2008] 5 CLJ 69). However I have taken the safer approach to also consider the petition on merits.

[13] By reason aforesaid we are in agreement with the findings of the learned High Court Judge and coupled with the further reasons as alluded to above there is merit in the preliminary objection on the issue of jurisdiction which warrants us to uphold same.

Academic Point

[14] Alluding to the factual matrix the sequence of events clearly establishes that upon dismissal of their petition by the Kuala Lumpur High Court, the petitioner filed and appeared as a supporting creditor in another petition for winding up of the respondent filed in the High Court of Sabah at Kota Kinabalu by another creditor EL Nutrition Sdn Bhd which petition was allowed and the respondent wound up on the 26 April 2010.

[15] The objective behind this appeal which is to reverse the KL High Court decision not to wind up the respondent has clearly been overtaken by events namely the winding-up of the respondent by the Kota Kinabalu High Court thus rendering the pursuit of this appeal academic.

[16] Upon the respondent being wound up by the Kota Kinabalu High Court the provisions of s. 226 and in particular ss. 226(3) and 226(4) is triggered and would take effect. The provision in s. 226(3) prohibits proceedings against the respondent except by leave of court and under s. 226(4), the winding up order operates in favour of all creditors of the respondent which would invariably include the appellant.

[17] It is our considered view that the net effect of the combined provision of ss. 226(3) and 226(4) is that the respondent cannot be made available to go through the motions of another winding up proceeding as upon winding up by the Kota Kinabalu High Court the respondent is regulated under the regime of s. 226 of the Companies Act. A liquidator would be appointed and directions from the winding up court sought as a consequence of the winding up order of the Kota Kinabalu High Court. Since the winding up ensures for the benefit of all the creditors (including the appellants) the mechanism for filing in proof of debt kicks in without the necessity and attendant expense of filing a separate winding up petition.

[18] The other important effect is the prevention of multiplicity of suits and minimising costs – see *Watta Battery Industires Sdn Bhd v. Uni Batt Manufacturing Sdn Bhd And Chow Siew Hon & 4 Ors (Interveners)* [1993] 1 CLJ 555 *Ham Ho Seng v. Aik Aik Holdings Sdn Bhd & Anor And Another Suit* [1999] 1 LNS 165.

[19] For the reasons adumbrated above we uphold the preliminary objection of the respondent on both the jurisdiction and academic point. The appeal is accordingly dismissed with costs and the order of the High Court Judge affirmed. Deposit to account of fixed costs.